

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 3164 – SB 3134

April 12, 2010

SUMMARY OF AMENDMENT (016318): Deletes the language of the original bill. Adds new language that deletes and rewrites all unauthorized substances tax laws.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue - \$1,086,300/Recurring
Increase State Expenditures - \$61,000/One-Time
\$1,193,000/Recurring

Increase Local Revenue – Exceeds \$100,000
Increase Local Expenditures – Exceeds \$100,000*

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue - \$543,200/Recurring
Increase State Expenditures - \$7,600/One-Time
\$490,600/Recurring

Increase Local Revenue – Exceeds \$50,000
Increase Local Expenditures – Exceeds \$50,000*

Assumptions applied to amendment:

- According to the Department of Revenue (DOR), the Department eliminated 12 enforcement positions and 3 legal positions when the previous unauthorized substances tax was ruled unconstitutional.
- The Governor's Recommended Budget Document for FY10-11 reflects the reduction of 14 positions with no improvements for the Department's Tax Enforcement Division from FY09-10 to FY10-11 (B-65); and the reduction of 32 positions with 4 improvement positions for a net reduction of 28 positions for the entire Department from FY09-10 to FY10-11 (B-67).
- DOR indicates the need to replace two eliminated positions in order to administer and enforce the provisions of this bill as amended (one Attorney 3 position and one Administrative Services Assistant 4 position).

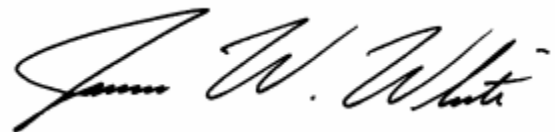
HB 3164 – SB 3134

- The increase to recurring state expenditures associated with replacing two of the eliminated positions in DOR is estimated to be \$130,000 per year (\$77,640 salaries, \$40,560 benefits, \$11,800 other). One-time state expenditures associated with replacement of two DOR positions are estimated to be \$7,600 (for computers, software, etc.).
- According to the Office of the Attorney General, three additional positions would be required to defend the state in subsequent litigation. The increase to recurring state expenditures for these positions is estimated to be \$360,600 per year (\$216,400 salaries, \$108,200 benefits, \$36,000 other).
- This amendment levies the newly proposed unauthorized substances tax on merchants of unauthorized substances.
- The term “merchant” is defined in part by anyone who sells or distributes unauthorized substances in a quantity sufficient to create a principal tax liability of at least \$10,000.
- The previous unauthorized substances tax generated \$1,086,340.58 during FY08-09 on a cash basis. Based on information provided by DOR, the state should generate approximately 50 percent of FY08-09 collections (or approximately \$543,200) under this bill as amended. DOR indicates the state would collect less in FY10-11 under this proposal, relative to actual collections in FY08-09 under previous law, because of the definition of merchant and the \$10,000 tax liability threshold. Therefore, a recurring increase to state revenue estimated to be \$543,200 per year.
- Local government entities will receive a portion of the revenue to cover costs of enforcement. Any associated increase to local government revenue and expenditures is unknown and difficult to quantify. However, the increase to local government revenue and expenditures are reasonably estimated to exceed \$50,000 per year statewide.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/rnc